



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE May 16, 2023

TO Select Committee on Blockchain, Financial Technology and Digital Innovation Technology

FROM Clarissa Nord, Legislative Editor

SUBJECT Comparison of Utah, New Hampshire, and Wyoming Decentralized Autonomous Organizations Legislation

Decentralized autonomous organizations (DAOs) are entities that utilize blockchains, digital assets, and similar technologies to coordinate a wide variety of business and social-related activities and have become increasingly popular in recent years.¹ In 2021, Wyoming became the first state to explicitly recognize and clarify the legal status of DAOs. Wyoming's approach allowed DAOs to register as a new type of Limited Liability Company (LLC).²

With respect to recent efforts to recognize DAOs as legal entities, the Utah Legislature and New Hampshire General Court (Legislature) considered legislation regarding DAOs during each state's 2023 legislative sessions. The legislation differs from Wyoming's approach in that they recognize DAOs as distinct corporate entities, where DAOs would not be encompassed into an existing corporate structure. This memorandum will provide a broad overview of DAO fundamental principles, the DAO model law, the Wyoming DAO supplement, as well as Utah and New Hampshire's approach regarding DAO legislation.

DAO OVERVIEW

A DAO is an entity in which those who have invested in the entity (contributors, participants, members, token holders, etc.) partake in the management and decision-making of the DAO. The entity does not have a central authority, instead, the authority is distributed among members who collectively determine and coordinate the actions of the DAO. With respect to governance, blockchain-based DAOs typically rely on smart contracts, which are self-executing programs that automate the actions required in a contract when specified conditions are met.³

¹ World Economic Forum, Wharton School – University of Pennsylvania, *Decentralized Autonomous Organizations: Beyond the Hype* (June 2022), <https://bdap.wharton.upenn.edu/decentralized-autonomous-organizations-beyond-the-hype-released/>.

² Nate DiCamillo, *State Lawmaker Explains Wyoming's Newly Passed DAO LLC Law*, CoinDesk (April 22, 2021), <https://www.coindesk.com/policy/2021/04/22/state-lawmaker-explains-wyomings-newly-passed-dao-llc-law/>.

³ Gail Weinstein, et al., *A Primer on DAOs*, Harvard Law School Forum on Corporate Governance (September 17, 2022), <https://corpgov.law.harvard.edu/2022/09/17/a-primer-on-daos/>.

DAOs have been formed for a variety of reasons, including the management of protocols, software, real estate finance, or the acquisition of artwork or historical artifacts.⁴ DAOs can seek to achieve a specific goal, manage a particular activity, deploy capital, or organize people.⁵

DAO MODEL LAW

DAOs face considerable legal uncertainties as their inherent structure does not easily correspond to an existing corporate model.⁶ According to the Coalition of Automated Legal Applications (COALA), a vast majority of existing DAOs are unregistered, and their legal status is ambiguous.⁷ COALA maintains that this uncertainty can be detrimental to the development and further utilization of the DAO model to conduct business.⁸ Additionally, DAOs operating without a corporate legal structure could potentially expose its participants to liability in cases where legal action is brought against a DAO.⁹

To address this consideration, COALA developed the **DAO Model Law**, which serves as a best-practice guide and aims to establish the uniform legal treatment of DAOs across the United States, with particular consideration of the legal personality and/or limited liability of DAO members. Briefly, the COALA Model Law considers the following concepts:

- **Chapter 1** defines the potential economic and social activities DAOs can engage in, the rights and obligations a DAO can acquire as a separate legal identity and provides definitions.
- **Chapter 2** provides technical and governance requirements a DAO must meet to benefit from a legal identity or personality, and for its members to receive limited liability protection.
- **Chapter 3** establishes potential actions that may lead to the members forfeiting limited-liability protection. Chapter 3 also clarifies that minimum capital requirements are not mandatory for DAOs and discusses governance rights within DAOs.
- **Chapter 4** specifies how a DAO under the Model Law may be governed and allows flexibility with respect to internal organization and procedures. It further acknowledges that DAOs may need to have representation off-chain for certain purposes.
- **Chapter 5** recognizes aspects that are specific to DAOs, such as the treatment of “contentious forks”, modifications, upgrades, and migrations on the DAO legal personality, as well as the limited liability of its members.
- **Chapter 6** considers two miscellaneous provisions regarding when general business organization law should apply to DAOs and establishes the recognition of DAOs as pass-through entities for tax purposes.

⁴ *Id.*

⁵ World Economic Forum, Wharton School – University of Pennsylvania, *Decentralized Autonomous Organizations: Beyond the Hype* (June 2022), <https://bdap.wharton.upenn.edu/decentralized-autonomous-organizations-beyond-the-hype-released/>.

⁶ *Id.*

⁷ Coalition of Automated Legal Applications, *DAO Model Law, Essentials* (2021), <https://coala.global/daomodellaw/>.

⁸ *Id.*

⁹ Nestor Dubnevych, *The Best Entities and Countries for DAO Registration in 2023*, Legal Nodes (March 17, 2023), <https://legalnodes.com/article/choose-a-crypto-friendly-country-for-dao>.

Altogether, the Model Law strives to establish uniformity and legal certainty, while still accounting for flexibility to provide for further innovation.¹⁰ Other states, such as Utah and New Hampshire, have recently utilized the Model Law as inspiration to develop DAO-specific legislation.

WYOMING DAO SUPPLEMENT

In 2021, the Wyoming Legislature enacted **SEA No. 73**, to provide DAOs the ability to register as a limited liability company (LLC). The Act created a supplement within the Wyoming LLC Act to establish existing law presiding over the creation and management of a DAO. The legislation also specified requirements for DAO operations and provided regulations pertaining to DAO creation, articles of organization, operating agreements, smart contracts, management, standards of conduct, membership interests, voting rights, and the withdrawal of members and dissolution.¹¹

The Legislature amended the DAO supplement in 2022, with **SEA No. 16**, to clarify certain provisions and provide that a DAO may vary in the extent that it is either member- or algorithmically-managed. The Act allowed the Secretary of State's Office (Office) to dissolve a DAO within 30 days after formation if a publicly available identifier is not provided in the articles of organization filed with the Office. The Act further clarified aspects pertaining to DAO membership, smart-contract modification, and provided a process to petition a court for dissolution.¹²

UTAH DAO ACT

In March 2023, the Utah Legislature enacted **House Bill 357** (the Utah DAO Act) to allow a DAO that has not registered as a for-profit corporate entity or a non-profit entity, to be recognized as the legal equivalent of a domestic LLC.¹³ The Utah State Legislature adopted a modified version of the COALA Model Law, and proponents of the Utah DAO Act maintain the Act provides a holistic approach and adaptable legal framework for DAOs.¹⁴

Members of the Utah Blockchain and Digital Innovation Task Force claim the Act accomplishes the following:

- Recognizes the evolving nature of DAO ownership and participation;
- Implements a “gatekeeping function” to verify the authenticity of DAOs through the Utah Division of Corporations and Commercial Code, encouraging transparency and regulatory compliance;
- Establishes a balance between anonymity and accountability by requiring a “disclosed incorporator” while maintaining privacy for DAO participants;
- Encourages best practices and security standards for DAO protocols;

¹⁰ Coalition of Automated Legal Applications, *Model Law for Decentralized Autonomous Organizations* (2021), <https://coala.global/daomodellaw/>.

¹¹ Wyoming Legislature, *SEA No. 73 – Decentralized Autonomous Organizations* (2021), <https://www.wyoleg.gov/Legislation/2021/SF0038>.

¹² Wyoming Legislature, *SEA No. 16 – Decentralized Autonomous Organizations-Amendments* (2022), <https://www.wyoleg.gov/Legislation/2022/SF0068>.

¹³ Utah Legislature, *HB357, Decentralized Autonomous Organizations Amendment* (2023), <https://le.utah.gov/~2023/bills/static/HB0357.html>.

¹⁴ David Wyly, *Utah's DAO Act: A Comprehensive Look at the Future of Decentralized Innovation*, Medium (March 23, 2023), <https://cryptocarc.medium.com/utahs-dao-act-a-comprehensive-look-at-the-future-of-decentralized-innovation-83fdace7bf76>.

- Provides a specialized tax treatment for DAOs by addressing the varying operational and revenue-generating models;
- Clarifies the legal obligations of DAO participants by eliminating implicit fiduciary duties, promoting flexibility and autonomy in governance structures;
- Provides a dispute resolution process by considering the nature of DAOs and a potential global participant base;
- Allows DAOs to modify their bylaws and governance structures as needed, without requiring extensive legal revisions.¹⁵

Altogether, supporters of the Utah DAO Act maintain that it provides DAOs a form of legal recognition that is unique to the entity rather than encompassing the entity into an LLC. The Utah DAO Act has an effective date of January 1, 2024.¹⁶

Members of the Utah Blockchain and Digital Innovation Task Force noted for the remainder of 2023, the Task Force plans to work with the Utah Division of Corporations and Commercial Code to develop intake technology, or the gatekeeping function, where the Division could prove smart contracts to establish legitimacy, while facilitating application procedures.¹⁷

NEW HAMPSHIRE DAO LEGISLATION

The New Hampshire General Court considered **House Bill 645-FN** during the 2023 session to establish DAOs as legal entities within the State. Similar to the Utah DAO Act, the New Hampshire General Court considered legislation that was influenced by the DAO Model Law. New Hampshire's approach creates a new corporate entity type that recognizes the implicit characteristics and qualities of a DAO but also has a distinct focus on public transparency as the primary regulatory principle.¹⁸

With respect to the status of House Bill 645-FN, it is currently retained in Committee to allow for further consideration prior to the New Hampshire General Court's 2024 Session.¹⁹ The General Court aims to consider a number of aspects that are not thoroughly defined in the current version of the bill draft, such as the registration method for DAOs, any dispute or dissolution mechanisms, as well as tax treatment through the New Hampshire Department of Revenue Administration.²⁰

¹⁵ *Id.*

¹⁶ Utah Legislature, *HB357, Decentralized Autonomous Organizations Amendment* (2023), <https://le.utah.gov/~2023/bills/static/HB0357.html>.

¹⁷ Fatemeh Fannizadeh, *Lawmakers in New Hampshire and Utah Recognize DAOs As Legal Persons*, Forbes Magazine (March 7, 2023), <https://www.forbes.com/sites/digital-assets/2023/03/07/-new-hampshire-utah-recognize-daos-as-legal-persons/?sh=52207ba7586b>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ New Hampshire House of Representatives Committee Streaming, *House Commerce and Consumer Affairs*, YouTube (February 8, 2023), <https://www.youtube.com/live/wsy-DVjv30A?feature=share>.